HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

1. W.P. no. 904/03 (S/S)
2. W.P. No. 176/06 (S/S)

1. Manoj Kumar Pathak
2. Usha Pant D/o Tara Pant.

VS

State of Uttaranchal and others.

Approved for reporting

~~Not approved for reporting~~

Date of decision: 25.02.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

ORIGINAL JURISDICTION

(1)-Writ Petition no. 904 (S/S) 2003

Manoj Kumar Pathak S/o Late Kailash Chandra Pathak,
R/o 11/32, Govt. Colony, Nar Singh Bari, Almora. -----Petitioner.

Vs.

1. State of Uttaranchal, through the Secretary Education,
   Govt. of Uttaranchal at Dehradun,
2. Director of Education (Secondary),
   Uttaranchal at Dehradun,
3. Joint Director of Education,
   Kumoun Region Nainital.
4. Joint Director of Education,
   Garhwal Region, Pauri Garhwal. ----Respondents.

AND

(2)-Writ Petition no. 176 (S/S) 2006

Usha Pant D/o Tara Chandra Pant,
R/o village Khantoli, P.O. Khantoli,
District Bageshwar. -----Petitioner.

Vs.

1. State of Uttaranchal, through the Secretary Education,
   Govt. of Uttaranchal at Dehradun,
2. Director of Education (Secondary).
   Uttaranchal at Dehradun,
3. Joint Director of Education,
   Kumoun Region Nainital. ----Respondents.

Sri Puran Singh Bisht, learned counsel for the petitioners,
Ld. Standing Counsel for the State/respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri P.S. Bisht, learned counsel for the petitioners and learned Standing Counsel for the State/ respondents.

2. In both the writ petitions there involve similar controversy to be determined by this Court, thus both the petitions are being decided by a common judgment.

3. The petitioners in their writ petitions have prayed to issue a writ of mandamus directing the respondents to consider the

case of the petitioners for appointment on the post of Assistant Teacher in L.T. Grade in accordance with the recruitment rules of 1983 after giving them quality point marks of their post graduate degree.

4. Briefly stated, the petitioners have applied for the post of Assistant Teacher (Biology) in L.T. Grade in Kumoun Region.

5. Contention of the petitioners is that they have applied for the aforesaid post in pursuance of the advertisement dated 17th, 24th June 2002 and 20th October 2004. According to the petitioners, they possess all the requisite qualifications and are eligible to be appointed for the said post. The petitioners came to know that they have not been awarded quality point marks for their post graduate degree in Chemistry.

6. Grievances of the petitioners are that the respondents arbitrarily did not grant quality point marks of post graduation degree of M.Sc. in chemistry.

7. The quality point marks are to be given in accordance with the Rule 15 of the U.P. Subordinate Education (Trained Graduates Grade) Service Rules, 1983 which are contained in Appendix-D, the same is quoted below:-

S. No.	Name of Examination	Quality Points
(i)	High School	The % of Marks/10
(ii)	Intermediate	The % of Marks x2/10
(iii)	Graduate Degree	The % Marks x 4/10

(iv)	Training Theory Ist Division II nd Division III Division *Practical-* Ist Division IInd Division IIIrd Division	 12 06 03 12 06 03
(V)	Post Graduate Degree Ist Division IInd Division IIIrd Division	 15 10 05

8. A counter affidavit has been filed in writ petition no. 904 (ss)2003 in which it is stated that the petitioners had applied for the post of Assistant Teacher, Biology in L.T. Grade, but they did not possess post graduation in the subject for which they had applied, thus they have not given quality points for their Post Graduation Degree according to the rule and condition prescribed in the advertisement. In para-8 of the counter affidavit it has been stated that according to the resolution, the Competent Selection Committee had adopted the procedure to give quality points to such applications, who posses Post Graduation qualification with Trained Graduation in such

subject for which he has applied for. Admittedly, the petitioner possess M.Sc. in Chemistry subject, not in Biology i.e. either in Botany or Zoology. As such, they cannot be given quality point marks for their Post Graduation qualifications.

9. It is alleged by the petitioners that for preparing the merit list, quality points are given for post graduate degree, irrespective of the subject. In the month of June, 2003, respondents have issued appointment letters for filling the post of Assistant Teacher, L.T. Grade, Hindi (Language) but the petitioners have been left out. On enquiry the petitioners came to know that their post graduate degrees in Chemistry has not been considered and no quality points has been awarded for the same. The petitioners were under impression that at the time of preparing merit list, the respondents shall consider their post graduation degree but the respondents have taken into account only post graduation degree in the Zoology and Botany. The post graduation degree in Chemistry has not been taken into account. The petitioners, alleging the discrimination as arbitrary and violative of Article 14 and 16 of the Constitution of India, relying of the Apex Court Judgment of Dr. M.A. Haque Vs. Union of India, 1993 (2) S.C.C. Pg. 213, have sought the mandamus for consideration of their cases for the appointment of L.T. Grade teachers through this writ petition.

10. The Division Bench of Hon'ble the Apex Court in the case of Dr. M.A. Haque Vs. Union of India, 1993 (2) S.C.C. Pg. 213 has held as under:-

"....We are also conscious of the fact that candidates in service have a disadvantage as against the fresh candidates in the tests particularly when they face the tests after a long lapse of time. As against this, however, we cannot lose sight of the

fact that the recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rule and the by-passing of the Public Service Commission permitted, it will open a back-door for illegal recruitment without limit. In fact this court has, of late, been witnessing a constant violation of the recruitment rules and a scant respect for the constitutional provisions requiring recruitment to the services through the Public Service Commission. It appears that since this Court has in some case permitted regularisation of the irregularly recruited employees, some Governments and authorities have been increasingly resorting to irregular recruitments. The result has been that the recruitment rules and the Public Service Commission have been kept in cold storage and candidates dictated by various considerations are being recruited as matter of course.……."

11. Rule 15. of the U.P. Subordinate Edu.(Trained Grad Grade) Service Rules, 1983 provides Procedure for direct recruitment, which reads as under:-

"1. (a) The Regional Deputy Director of Education concerned shall in respect of the vacancies of both branches (Men's and Women's Branch) to be filled by direct recruitment, advertise the vacancies subject-wise, along with the number of vacancies to be reserved for the candidates belonging to the Scheduled Castes/Tribes and other categories of persons in at least two leading newspapers, one having wide circulation in the region and the other in the State, and invite applications for direct recruitment in the proforma given in Appendix 'C'. Such advertisement shall, inter alia, mentioned the pay and allowances relating to the posts, minimum academic

qualifications for appointment thereto and such other information as may be considered necessary.

(b). The application referred to in Clause (a) shall be sent be registered post, to the Regional Deputy Director of Education within three weeks from the date of publication of advertisement in the newspaper, so as to reach the office of the Regional Deputy Director of Education on or before the last date of receipt of application mentioned in the advertisement.

(c). The application referred to in Clause (a) shall be accompanied by-

(i) a fee of fifteen rupees in the form of Crossed Postal Order payable to the concerned Regional deputy Director of Education:

Provided that such fee shall in the case of candidates belonging to the Scheduled Castes and Scheduled Tribes be five rupees:

(ii) a self-addressed envelope; and

(iii) other documents as may be required.

(d) No application sent in accordance with Clause (b) or (c) shall be taken into consideration.

2. The Regional Deputy Director of Education shall scrutinize the applications and shall cause the lists of candidate to be prepared of the basis of quality points specified in Appendix 'D'. The Regional Deputy Director of Education shall place the lists along with the applications before the Selection Committee.

3. There shall be a Selection Committee for selection of candidates for appointment by direct recruitment comprising:

(i) Appointing Authority,

(ii) The Regional Deputy Director of Education or the Regional Inspectress of Girls Schools, who is not appointing authority,

(iii) Regional Assistant Director of Education (Basic).

The appointing authority shall be the Chairman.

4. The Selection Committee shall, after considering the cases of candidates on the basis of lists referred to in sub-rule (2), prepare subject-wise lists of selected candidates for appointment in L.T. Grade in order of merit as disclosed by the quality points complied under sub-rule (2). If two or more candidates obtain equal quality points, the name of the candidate who is older in age shall be placed higher in list. The number of names in the list shall be larger (but not larger by more than twenty five percent) than the number of vacancies advertised under sub-rule (1)."

12. Sub rule (4) of Rule 15 of U.P. Subordinate Educational (Trained Graduates Grade) Service Rules 1983 reads as under:

"*The selection Committee shall, after considering the cases of candidates on the basis of lists referred to in sub-rule (2), prepare subjectwise lists of selected candidates for appointment in L.T. Grade in order of merit as disclosed by the quality points complied under sub-rule (2). If two or more candidates obtained equal quality points the name of the candidate who is older in age shall be placed higher in list. The number of names in the list shall be larger (but not larger by more than 25 per cent) than* the number of vacancies advertised under sub-rule (1)."

13. **APPENDIX 'D'**

[See Rule 15(2)]

Quality points for selection by direct recruitment

Name of Examination	Quality Points
1. High School	$\frac{\text{The Percentage of marks}}{10}$
2. Intermediate	The Percentage of marks x 2

3. Graduate Degree	$\frac{\text{The Percentage of marks} \times 4}{10}$
Others:	
4. Training: I Division II Division III Division	1st Div. 2nd Div. 3rd Div.
(a) Theory 1263	
(b) Practical 1263	
5. Post Graduate Degree 15105.	

14. Appendix 'D' read with the above rule shows that for calculating the quality points, for a Post Graduate Degree, it has not been made necessary that the Post Graduate Degree should be in the same subject for which the candidate has sought appointment in L.T. Grade. Thus, denial of the quality points to the petitioners can't be said to be justified. In view of principle of law laid down in MA Haque V/s Union of India (1993) 2 1993 Supreme Court cases Pg 213, the Government is supposed to comply with the rules framed under Article 309 of the Constitution of India. U.P. Subordinate Education (Trained Graduates Grade) Service Rules 1983 are the rules which are framed under Article 309 of the Constitution of India and respondents cannot bypass the same.

15. As will appear from the aforesaid Rule that the post graduation of the same subject being not provided under the statutory rule, the petitioners are entitled to be considered for selection in accordance with the Rules.

16. In the circumstances, in view of the above discussions this Court is in full agreement with the submission of learned counsel for the petitioners that the petitioners have wrongly

been denied consideration of their cases by not awarding them quality points. Therefore, writ petitions deserve to be allowed.

17. For the reasons stated above, a writ of mandamus is hereby issued directing the respondents to consider the cases of the petitioners by awarding them quality points as per the U.P. Subordinate Educational (Trained Graduates Grade) Service Rules 1983 within a period of three months from today, as they fulfill necessary qualifications as advertised by the respondents. And those of the petitioners who obtain higher quality points to the points obtained by the last man selected in the recruitment, shall be given appointment within a month thereafter on the post of Assistant Teacher L.T. Grade.

18. The writ petitions are allowed. No order as to costs.

19. Let a certified copy of this judgment be placed in the connected will petition.

(Rajesh Tandon, J.)

Feb. 25,2006
NCM: